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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,091

07/20/2006

Salvatore Carbone

RUBNP01

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7590

04/14/2010

IP STRATEGIES  
12 1/2 WALL STREET  
SUITE E  
ASHEVILLE, NC 28801

EXAMINER

LONG, ROBERT FRANKLIN

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

04/14/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,091	<b>Applicant(s)</b> CARBONE, SALVATORE	
	<b>Examiner</b> Robert F. Long	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15 and 17-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 17-20 and 22-30 is/are rejected.
- 7) ☐ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The amendment filed 01/08/10 has been entered. Claims 15 and 17-30 are pending in the application. Corrective actions to the drawings are noted and accordingly the prior drawing objections are hereby withdrawn.

#### ***Specification***

The abstract of the disclosure is objected to because the universal brackets are not clearly defined or limited as to what the bracket structurally constitutes. Figures 1 and 5 depict brackets "F" that have two extruding prongs/hooks having an open area/space there between forming a pitch fork shape bracket that can support dumbbells wherein the dumbbells can nest within the bracket via the ends of the dumbbells resting on the extruding prongs/hooks. Correction is required. See MPEP § 608.01(b).

#### ***Claim Objections***

**Claim 23** is objected to because of the following informalities: The phrase "dimensions adequate to support and lodge the command device and to support the feet of the athlete" is not clear if the foot rest is supporting both the command device and feet of a user. Examiner is interpreting that the foot rest supports both the command device and the user. Also the term "athlete" is a relative term. Consider reciting "user" in place of "athlete". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 15, 17, 19-20, and 22-30**, are rejected under 35 U.S.C. 103(a) as being unpatentable over **Capizzo (US 6926648 B2) in view of Parker (US 6805409 B2)**.

**Regarding claims 15, 17, 19-20, 24-28 and 30**, Capizzo discloses gym work-out equipment for the training of the chest, deltoids, trapeziums and triceps muscles, comprising: a bench (104) including a back-rest, that allows an user to do exercises with the back-rest in a horizontal position for stretching and pectoral crosses, a slanted position for pectoral crosses and an up-right position for deltoids and stretching with dumb-bells for triceps; (incline or decline and other benches, column 8, lines 9-14) and an assist system (stands 1 and 2), including servomechanism arms (upper translating assembly 15) adapted to hold weights with a support member 6/6a, a mechanical, hydraulic, electrical, or pneumatic or electromechanical having switches lift system (linear motion actuator 13/control rods 7, column 6, lines 1-33) adapted to lift the arms, and a command device (dual actuator controller 3) that controls the assist system when activated through the use of rods, pedals, switches or push buttons (control rods 7,

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upper translating assembly 15, controller 3) wherein the arms are adapted to lift the weights held by the arms under control of the command device, to assist the user without requiring the user to get up from or change the position of the bench and wherein the arms are adapted to position the weights with respect to the bench and the exercise to be performed by the user, (Abstract, benches, col. 8, lines 9-14).

*Capizzo states: "invention could be easily modified dimensionally to accommodate incline and decline bench presses and seated benches used for shoulder press types of exercise", (column 8, lines 9-14).*

Capizzo also discloses side panels to form a barrier (cover panels 27-30) around the electrical and mechanical parts which could be used for marking and/or advertising.

*Capizzo states: "A graduated scale 110 in the form of markings or a decal can be included on the cover 28", (column 6, lines 34-64).*

Capizzo fails to disclose that these "seated" benches include a movable/adjustable bench and to use the covers for marketing/advertising purposes.

Parker discloses an articulated/adjustable and movable bench, (column 4, lines 1-67, column 5, lines 1-67, column 6, lines 1-67, figures 1-3).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify/substitute the seated benches and/or bench (104) of Capizzo's to be a movable/adjustable bench as taught in Parker for the desired exercise routine and to further use the cover panels for marketing/advertising if desired since Capizzo already teaches marking the covers with graduated scales.

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**Regarding claims 22-23, and 29,** Capizzo discloses an electronic switchboard (control circuit figure 6) that is adapted to position the support members 6/6a (selectable raising and lowering by user input, column 4, lines 50-67), representing arm positions chosen by the user according to exercises done and a foot support/rest having the command device disposed on the foot support/rest (foot pedal controller assembly 3, column 6, lines 65-67, column 7, lines 1-49, figures 4-6). See figure 6 below for control circuit and foot pedals (#58) command device schematic –

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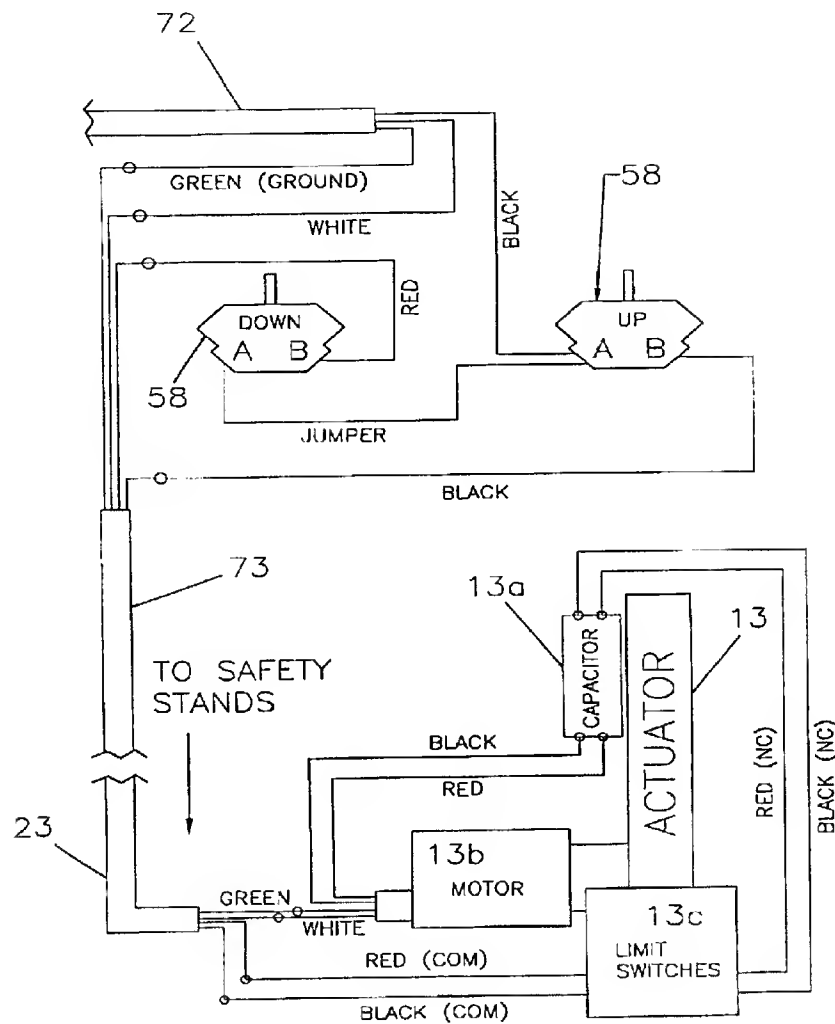


FIG. 6

Claims 15, 19-20, 24-28 and 30, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez (US 6086520 A) in view of Parker (US 6805409 B2).

**Regarding claims 15, 19-20, 24-28 and 30,** Rodriguez discloses gym work-out equipment (weight supporting system 10) for the training of the chest, deltoids, trapezius and triceps muscles, comprising: a bench (22) including a back-rest, that allows an user to do exercises with the back-rest in a horizontal position for stretching and pectoral crosses, a slanted position for pectoral crosses and an up-right position for deltoids and stretching with dumb-bells for triceps; (column 2, lines 53-56) and an assist system (supporting units 20), including servomechanism arms (upper extents 34) adapted to hold weights (rest 42), a mechanical, hydraulic, electrical, electromechanical having switches or pneumatic lift system (electric motor 48/jack screw 46) adapted to lift the arms, and a command device (pedal 24/activation button 54, column 2, lines 48-54, column 3, lines 20-30) that controls the assist system when activated through the use of rods, pedals, switches or push buttons (plungers 64, button 54, jack screw 46, spring 56, column 3, lines 20-42) wherein the arms are adapted to lift the weights held by the arms under control of the command device, to assist the user without requiring the user to get up from or change the position of the bench and wherein the arms are adapted to position the weights with respect to the bench and the exercise to be performed by the user, (invention can be employed with other exercises such as incline bench press, butterfly, and leg lift exercise, column 2, lines 53-60).

Rodriguez also states *"invention also employs a containment system for selectively restraining the sliding movement of the motor platform"* (column 3, lines 44-50). Examiner is interpreting the selective restraining sliding movement to enable an user to position the arms as desired prior, during, and even after and exercise.



Rodriguez also discloses side panels to form a barrier (housing 28) around the electrical and mechanical parts that could be used for advertising.

Rodriguez fails to disclose that the bench (22) is a movable/adjustable bench and to use the covers for marketing/advertising purposes.

Parker discloses an articulated/adjustable and movable bench, (column 4, lines 1-67, column 5, lines 1-67, column 6, lines 1-67, figures 1-3).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify/substitute the bench (22) of Rodriguez to be a movable/adjustable bench as taught in Parker for the desired exercise routine and to further use the cover panels for marketing/advertising if desired.

**Claim 18**, is rejected under 35 U.S.C. 103(a) as being unpatentable over **Capizzo (US 6926648 B2) in view of Hummer Jr. (US 7001314 B1)**.

Capizzo discloses a Capizzo discloses an assist system (stands 1 and 2), including servomechanism arms (upper translating assembly 15) adapted to hold weights with a support member 6/6a, a mechanical, hydraulic, electrical, or pneumatic or electromechanical having switches lift system (linear motion actuator 13/control rods 7, column 6, lines 1-33) adapted to lift the arms, and a command device (dual actuator controller 3).

Capizzo also teaches using a variety different actuators, (column 6, lines 10-33).

Capizzo states: *"The linear motion actuator can be chosen from the field of electric, hydraulic, pneumatic or other type of powered linear motion actuator. A Duff-Norton electric actuator model number HMPB 6905 can be used", (col. 6, lines 10-33).*

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Capizzo fails to disclose using a pulley.

Hummer Jr. teaches a similar dumb-bell spotting exercise device using a pulley 154, with a control box 163, shaft 152 and a motor 150, to lift a pair of dumb-bells (column 4, lines 37-59, figures 1-10).

It would have been obvious to a person having ordinary skill in the art at the time of the invention to use a pulley in conjunction with the linear motion actuator 13, control rods 7, (column 6, lines 1-33) and/or use an actuator that has a pulley in order to lift the dumb-bells in the desired manner.

### ***Allowable Subject Matter***

**Claims 21** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and per corrective action of specification objections.

Also, with respect to claim 21 ***corrective action(s) is/are required in the specification*** since brackets are not clearly defined or limited as to what the bracket structurally constitutes absent the drawings. Examiner bases the objection to being allowable on Figures 1 and 5 which depict brackets "F" that have two extruding prongs/hooks extending laterally/parallel to the ground having open areas/spaces there between forming a pitch fork shape bracket that can support dumbbells wherein the dumbbells can nest within the bracket via the ends of the dumbbells resting on the extruding prongs/hooks. As presently claimed and described examiner contends that

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Capizzo discloses two arms that can incremental move up and down at different positions controllable by a user.

### ***Response to Arguments***

Applicant's arguments filed 01/08/10 have been fully considered but they are not persuasive. Capizzo or Rodriguez do not disclose or suggest gym work-out equipment having arms that are adapted to position the weights with respect to the bench and the exercise to be performed by the athlete and that Capizzo does not suggest using another bench and/or adjustable bench.

Examiner contends that Capizzo's safety stands 1 and 2 provide different selectable positions during a lift controllable by a foot pedal which do position the weights with respect to the bench. Examiner cites three recitations in Cappizzo that disclose the stands do position the weights with respect to the bench-

Capizzo states: *"two safety stands 1 and 2 that can be placed on either side of an existing bench 104 of a bench press 100 that will provide for **selectable, incremental raising or lowering and holding in place of the barbell** as determined by user input during the time of exercise", (column 4, lines 50-55).*

Capizzo also states: *"A foot pedal "up" and "down" dual actuator controller 3 can be placed at the end of the bench 104 in the proximity of the user's feet allows for synchronous parallel **actuator control**, and a magnetic base convex mirror 4 that can be attached to the bench press 100 to enable the user to see the foot pedal when lying on the bench performing the exercise", (column 4, lines 59-65).*

Capizzo also states: *"user will be able to adjust the vertical height of the support members by activating the "down" foot pedal control to **any desired incremental height**", (column 7, lines 62-67).*

Since Capizzo discloses the stands vertical positions can be controlled and adjusted to any vertical height examiner contends the stands are therefore adapted to position the weights with respect to the bench.

Examiner contends that Rodriguez containment system provides different selectable positions during a lift with respect to the bench - see below.

Rodriguez also states *"invention also employs a containment system for selectively restraining the sliding movement of the motor platform" (column 3, lines 44-50).*

Also, examiner contends Capizzo does teach and suggest using other benches such as shown in Parker. See below-

*"It is also contemplated that the invention could be easily modified dimensionally to **accommodate incline and decline bench presses** and **seated benches** used for shoulder press types of exercise. Applying the same type basic type of system architecture could easily be done for spotting of standing types of powerlifting exercises such as the squat", (column 8, lines 8-18).*

Since Capizzo discloses using the safety stands to perform partial reps/progressive rep training in place of using boards in a wide variety of exercises that use different benches and ones that do not require benches examiner contends it would

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have been within one skilled in the art to use any desired bench for any desired partial rep/progressive rep training routine.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., Universal brackets F having open areas to grip dumbbells) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, the specification does not make up for this deficiency as noted above.

Also, applicant's arguments with respect to claims 21 have been considered but are moot in view of the new ground(s) of objection and noted allowable subject matter per corrective action.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **US 6632159 B1** and **US 6558299 B1** – *Method/system and device for assisting weight lifters in performing weight lifting exercises having computer controlled spotting arms with position memory storage of the arms.*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert F. Long whose telephone number is (571)270-3864. The examiner can normally be reached on Monday-Friday (7:30-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert F Long/

Examiner, Art Unit 3764

Wednesday, April 07, 2010

/Steve R Crow/

Primary Examiner, Art Unit 3764